

MF 06-8

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC TRUCKING, INC.,
Taxpayer**

**Docket No.: 05-ST-0000
Account No.: 00 0000000
NTL No.: 00-0000000
Citation/Warning: 00000**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue; Mr. John Doe appeared *pro se*.

Synopsis:

On June 24, 2005 the Illinois Department of Revenue (hereinafter the "Department") issued a Notice of Tax Liability (hereinafter the "NTL") to ABC Trucking, Inc. (hereinafter the "Taxpayer") for motor fuel use tax. The NTL alleges the Taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL and a hearing was held. It is recommended the decision of the Director of the Department be that the taxpayer was liable for the tax imposed by the NTL.

FINDINGS OF FACT:

1. On October 20, 2004, the Taxpayer was cited for operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals, or without a valid Illinois Single-Trip permit or without a valid 30-day

International Fuel Tax Agreement temporary permit. (Dept. Ex. No. 1)

2. On June 24, 2005, the Department issued NTL number 37-460771 P to the Taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license while operating the vehicle on October 20, 2004. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. No. 1)

3. The Taxpayer admits that he was operating without the proper license and decals but thinks the fine is excessive. The Taxpayer was not trying to avoid any Illinois tax liability. (Tr. pp. 9-12)

4. The Taxpayer is aware of the need for the stickers and decals. Taxpayer has approximately 25 trucks in his fleet. Since the time of the violation he has gotten the IFTA stickers. (Tr. pp. 9-12)

5. Taxpayer was notified that an attorney could represent him in this matter. He chose to proceed without one. (Tr. p. 8)

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the Taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (hereinafter the “Act”) (35 **ILCS** 505/1 *et seq.*), which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 **ILCS** 505/13a.4)

Section 13a.5 provides for an exception for motor carriers holding a single trip permit. (35 **ILCS** 505/13a.5) Section 13a.4 of the Act also provides that the motor fuel tax license shall be carried in the cab of each vehicle. (35 **ILCS** 505/13a.4) Section 13a.6 of the Act states that if a

commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b))

Section 21 of the Act incorporates by reference Section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5 Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978)

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the Taxpayer admitted that he did not have a license for the vehicle on the day in question, but he stated that he was not trying to circumvent the law and he thinks the \$1,000 is excessive.

The Act provides that no motor carrier shall operate without first securing a license from the Department or securing a license issued under the International Fuel Tax agreement by any member jurisdiction. Nothing in the Act allows for an abatement of the penalty when a party fails to first obtain the license before operating the vehicle. Although a taxpayer may have corrected the error as soon as possible after the citation is issued, the fact remains that he was in violation of the law the day the citation was issued. It must therefore be recommended that the Notice of Tax Liability be affirmed in its entirety.

Barbara S. Rowe
Administrative Law Judge
June 30, 2006